IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

PETITION NO.33 OF 2006

Re: Pradeepkumar S. Dixit ..Debtor.
Ex-parte :
Ramchandra G. Nimbalkar .. Petitioning Creditor.

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Mr. R.G. Nimbalkar – Petitioning Creditor present in person.
Mr. Rahul Chitnis with Mr. Ashok Kamat i/b V. Deshpande & Co. for the Debtor.

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CORAM: DR. D.Y. CHANDRACHUD, J.

21st November, 2006.

P.C. :

The Insolvency Petition is based upon a decree passed by this Court on 8th September, 2003 in Summary Suit 5936 of 1999. The Petition recites that the total amount due from the Debtor is in excess of Rs.27.56 lacs, in addition to which further interest is due and payable. An insolvency notice was taken out which was duly served on the Debtor on 3rd April, 2006. No Notice of Motion was taken out for setting aside the insolvency notice and the act of insolvency was complete on 9th May, 2006. An appeal was filed against the decree by some of the partners of the partnership firm upon which a conditional order was passed by a

Division Bench on 30th June, 2004 in Notice of Motion 1800 of 2004 in Appeal 290 of 2004. Counsel appearing for the Debtor has, however stated that no appeal has been filed by the Debtor against the decree and the Motion taken out for setting aside the decree has been dismissed in default. In these circumstances, there is no legitimate defence to the Petition and an order of adjudication would have to be passed. However, counsel appearing for the Debtor has stated that the Debtor is advised to challenge the decree in appeal. In order not to preclude the Debtor from seeking his remedies in appeal against the decree, in my view, it would be appropriate if the order of adjudication is stayed for a period of four weeks so as to enable the Debtor to move an appeal against the Decree. In the circumstances, the Petition is made absolute in terms of prayer clause (a). The order of adjudication shall, however, remain stayed for a period of four weeks from today so as to enable the Debtor to seek his remedies in appeal, against the decree.